

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KEVIN DUFFIE,)	NO. CV 10-4446-R(E)
)	
Petitioner,)	
)	
v.)	ORDER OF DISMISSAL
)	
JOHN MARSHALL, Warden,)	
)	
Respondent.)	
)	
)	

Petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody" on June 16, 2010. The Petition challenges the criminal judgment in Los Angeles Superior Court case number BA159832 (Petition at 2). Petitioner previously challenged this same judgment in a prior habeas corpus petition filed in this Court. See Duffie v. Taylor, CV 01-4082-DT(E). On April 26, 2005, this Court entered Judgment in Duffie v. Taylor, CV 01-4082-DT(E), denying and dismissing the prior petition on the merits with prejudice.

The Court must dismiss the present Petition in accordance with 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and

1 Effective Death Penalty Act of 1996"). Section 2244(b) requires that
2 a petitioner seeking to file a "second or successive" habeas petition
3 first obtain authorization from the court of appeals. See Burton v.
4 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive
5 authorization from Court of Appeals before filing second or successive
6 petition, "the District Court was without jurisdiction to entertain
7 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.
8 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)
9 requires the permission of the court of appeals before 'a second or
10 successive habeas application under § 2254' may be commenced"). A
11 petition need not be repetitive to be "second or successive," within
12 the meaning of 28 U.S.C. section 2244(b). See, e.g., Calbert v.
13 Marshall, 2008 WL 649798, at *2-4 (C.D. Cal. Mar. 6, 2008); Miles v.
14 Mendoza-Powers, 2007 WL 4523987, at *2-3 (E.D. Cal. Dec. 19, 2007).
15 Petitioner evidently has not yet obtained authorization from the Ninth
16 Circuit Court of Appeals.¹ Consequently, this Court cannot entertain
17 the present Petition. See Burton v. Stewart, 549 U.S. at 157.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25

26 ¹ In fact, the Ninth Circuit previously denied
27 Petitioner's application for authorization to file a second or
28 successive petition. See Order, filed November 21, 2007 in
Duffie v. Taylor, No. 07-73447 (9th Cir. Nov. 21, 2007).

1 For all of the foregoing reasons, the Petition is denied and
2 dismissed without prejudice.

3
4 LET JUDGMENT BE ENTERED ACCORDINGLY.

5
6 DATED: July 1 2010.

7
8 
9
10 MANUEL L. REAL
11 UNITED STATES DISTRICT JUDGE
12
13

14 PRESENTED this 29th day of
15 June, 2010, by:

16
17 
18 CHARLES F. EICK
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25
26
27
28